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November 21, 2019

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: ***Expanding Flexible Use of the 3.7 to 4.2 GHz Band, GN Docket No. 18-122 and
Updating the Commission's Rule for Over-the-Air Reception Devices, WT
Docket No. 19-71***

Notice of Ex Parte Communication

Dear Ms. Dortch:

On November 19, 2019, Louis Peraertz, Vice President of Policy for the Wireless Internet Service Providers Association ("WISPA") and Jeffrey Carlisle of Lerman Senter, PLLC, counsel to WISPA, met with Will Adams, Legal Advisor to Commissioner Brendan Carr. The purpose of the meeting was to discuss: (1) the benefits of coordinated sharing among fixed point-to-multipoint ("P2MP") and Fixed-Satellite Service ("FSS") earth stations in the portion of the 3700-4200 MHz band that is not cleared for auction; and (2) the Over the Air Reception Devices ("OTARD") Notice of Proposed Rulemaking.¹ WISPA supports both the coordinated sharing approach for C-band first proposed by the Broadband Access Coalition in its June 21, 2017 Petition for Rulemaking² and the OTARD rule change proposed by the Commission, both of which received a unanimous Commission vote to seek public comment.

C-band NPRM

Mr. Peraertz summarized the arguments that WISPA made in its comments and other pleadings in the C-Band proceeding demonstrating that its sharing proposal would serve the Commission's top priority to bridge digital divides while also protecting delivery of video programming content by FSS earth stations. WISPA's pleadings include the sharing study

¹ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 6915 (2018) ("C-Band NPRM"); *Updating the Commission's Rule for Over-the-Air Reception Devices*, Notice of Proposed Rulemaking, 34 FCC Rcd 2695 (2019) ("OTARD NPRM").

² See Broadband Access Coalition, Petition for Rulemaking to Amend and Modernize Parts 25 and 101 of the Commission's Rules to Authorize and Facilitate the Deployment of Licensed Point-to-Multipoint Fixed Wireless Broadband in the 3700-4200 MHz Band, RM-11791 (filed June 21, 2017).



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submitted by Dr. Jeff Reed from Virginia Tech on behalf of Google, Microsoft and WISPA that showed, using conservative inputs and real-world propagation tools, that FSS earth stations require, on average, approximately 10 km of co-channel separation to ensure that earth stations are protected from harmful interference.³ Mr. Peraertz explained that, under the coordinated sharing approach, each P2MP station would be individually coordinated under Part 101 of the Commission's Rules in the same manner that point-to-point systems are currently coordinated in the band. Mr. Peraertz also explained that the Reed Study demonstrated that more than 80 million Americans would have access to this new spectrum resource for P2MP, the vast majority of whom reside in rural areas that are most lacking in fixed broadband access.⁴ Notably, the Reed Study analyzed co-channel sharing only, and non-co-channel sharing would permit even more Americans to access more spectrum in more areas of the country.

As shown by WISPA, the coordinated sharing approach has been implemented since 2008 in the adjacent 3650-3700 MHz band, where P2MP licensees have successfully demonstrated that they can co-exist with FSS earth stations. There are many examples where P2MP operators have demonstrated that they can operate inside of the existing 150 km zone and have obtained consent from the earth station operators to do so. Some are operating as close as *19 meters* from a co-channel FSS earth station. The coordinated sharing approach would simply automate the coordination process rather than subject it to customized interference showings and legal contracts, as is the case currently, thereby reducing transactional costs and time, and expediting service to the public.

Mr. Peraertz also explained that WISPA has already rebutted the recent arguments from the Content Companies.⁵ First, with respect to the Content Companies' claim that our C-Band sharing proposal would restrict earth stations from expanding services in the future, our position is that such expansions are expected to be relatively rare based on the current rate of licensing of new earth stations in the band and, in any event, the P2MP proposal would fully accommodate such expansion through coordination that, if required, would mandate a shutdown of the affected P2MP operations.⁶ It is unlikely that any P2MP provider would rely on C-band exclusively as, like now, such providers are likely to use multiple bands to provide service. Second, with respect to mobile earth stations, our position is that the critical element is the C-band *uplink* connection in the paired 6 GHz portion of C-band, not the downlink in 3700-4200 MHz which is

³ See Letter from WISPA, Google and Microsoft to Marlene H. Dortch, FCC Secretary, GN Docket No. 18-122 (filed July 15, 2019) ("Reed Study").

⁴ *Id.* at 2.

⁵ See Letter from the Content Companies to Marlene H. Dortch, FCC Secretary, GN Docket No. 18-122 (filed Nov. 15, 2019).

⁶ See *id.*



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used only to monitor the uplink communications.⁷ Mobile C-band operations are often pre-scheduled (for example, for coverage of major sporting events) and thus could easily be made subject to coordination. Moreover, mobile C-band operations are often used solely for backup in cases where, for example, a fiber connection was cut. But even for unscheduled events such as breaking news coverage, the critical element is the uplink, which does not occur in 3700-4200 MHz and therefore would not be impacted by P2MP operations in the band.⁸ Based on the record, Mr. Peraertz emphasized that there is no technical reason for the Commission to not allow coordinated sharing in the uncleared portion of the C-band.

Mr. Peraertz also explained that allowing spectrum sharing in the 200 MHz used for satellite services is entirely consistent with the principles guiding the Commission's public auction of the C-Band established by Chairman Pai and most recently expressed in his announcement and letters of November 18, 2019.⁹ Those principles state that the auction "must protect the services that are currently delivered using the C-band," and preserve "the availability of the upper 200 megahertz of this band for the continued delivery of programming."¹⁰ Our C-Band sharing proposal facilitates both protection of current uses and continued availability of video programming. One of the services that is currently delivered using the C-Band is point-to-point fixed service. Our proposal would not only allow that service to continue, but it would also allow more intensive use of fixed wireless service because only minor technical amendments to Part 101 of the Commission's rules would be needed to permit point-to-multipoint fixed wireless service in the band. Our proposal would also preserve the continued delivery of video programming in the 200 megahertz that will remain for FSS earth stations because our proposal requires coordinated sharing with those earth stations via an automated frequency coordinator.¹¹

OTARD NPRM

With regard to the OTARD NPRM proceeding, Mr. Peraertz advocated for WISPA's request that the Commission update the OTARD rule to apply to all fixed wireless transmitters and receivers, regardless of whether the equipment is used for reception, transmission, or both, so long as the equipment meets the existing size restrictions for customer-end equipment. Mr. Peraertz explained that this request is fully consistent with the Commission's goals when it

⁷ *Id.*

⁸ *Id.*

⁹ *See, e.g.,* Letter from Ajit V. Pai, Chairman, FCC to Senator John N. Kennedy (Nov. 18, 2019).

¹⁰ *Id.*

¹¹ *See* Comments of the Broadband Access Coalition, WT Docket No. 18-122 (filed Oct. 29, 2018) at 26-28.



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initiated its Wireless Infrastructure Notice of Proposed Rulemaking and Notice of Inquiry proceeding in 2017.¹² As the Commission stated in that item, “realizing the potential benefits of next-generation broadband will depend . . . on having an updated regulatory framework that promotes and facilitates next generation network infrastructure facility deployment.”¹³ Fixed wireless technology and equipment has significantly evolved since the Commission’s first application of the OTARD rules to fixed wireless in its 2000 *Competitive Networks Order*.¹⁴ At that time, the Commission held that it did “not intend these rules to cover hub or relay antennas used to transmit signals to and/or receive signals from multiple customer locations.”¹⁵ Mr. Peraertz explained that, today, extending the rule to all fixed wireless equipment would be consistent with the original intent of OTARD, will accelerate the deployment of competitive broadband services in markets across the country, and will empower consumers to help bring competitive wireless broadband to their communities by hosting hub sites.

Mr. Peraertz and Mr. Carlisle also explained, as stated in WISPA’s comments in the proceeding, that extending the OTARD rules as proposed is entirely consistent with the original intent of OTARD to ensure access to video programming and foster competition, and is well within both the Commission’s direct and ancillary authority.¹⁶ Section 207 has been read for almost twenty years to mean what the Commission said it meant in the *Competitive Networks Order*: while it directed the Commission to take action with regard to specific devices, in no way did it restrict or prohibit the Commission’s “independent exercise of the same authority under Section 303 and other provisions.”¹⁷ Reading Section 207 restrictively, as did the single dissent to the *Competitive Networks Order*,¹⁸ ignores the particular context in which that provision was passed, when Congress provided direction to the Commission to promulgate rules to protect competitive services given the explosive growth of alternative technologies to provide video

¹² See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 3330 (2017).

¹³ *Id.* at 3331, ¶ 1.

¹⁴ See *Promotion of Competitive Networks in Local Telecommunications Markets*, First Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 22983 (“*Competitive Networks Order*”), pet. denied, *Building Owners & Mgrs. Ass’n Int’l v. FCC*, 254 F.3d 89 (D.C. Cir. 2001).

¹⁵ *Id.* at 23027–28, ¶ 99.

¹⁶ See Comments of WISPA, WT Docket No. 19-71 (filed June 3, 2019) (“WISPA Comments”) at 5-6, 12-15.

¹⁷ *Competitive Networks Order* at 23031, ¶ 106.

¹⁸ *Id.* at 23124-26.



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services at the time.¹⁹ A review of the legislative history of Section 207 reveals nothing inconsistent with the rules adopted by the Commission in the *Competitive Networks Order*, or with the rules the Commission now proposes to adopt.²⁰

In its 2004 Order on Reconsideration, the Commission agreed with a petition from Triton Network Systems (“Triton”) to extend the *Competitive Networks Order*’s holding to point-to-point distribution equipment that Triton planned to use to provide video programming services to its customers.²¹ As the Commission explained, “it would be illogical for the Commission to protect one group of consumers (i.e., multi-channel video) but deny such protections to another group of consumers (i.e., fixed wireless) based solely on the nature of the equipment in use.”²² That rationale applies with equal force to WISPA’s request that the Commission amend its OTARD rules to apply to all fixed wireless transmitters and receivers, regardless of whether the equipment is used for reception, transmission, or both, so long as the equipment meets the existing size restrictions for customer-end equipment. As WISPA explained, its members use this fixed wireless equipment to provide video services to their customers.²³

The same interests that object to the proposed application of the OTARD rules here objected to even the narrowest first application of the rules in 1996, charging that the Commission acted outside its authority and unconstitutionally because the rules violated the Commerce Clause and the Takings Clause of the Fifth Amendment.²⁴ Unsurprisingly, they surface the same objections again, despite not having yet been successful in asserting them. In all likelihood, they will likely continue do so every time the Commission proposes any change the OTARD rules, no matter how narrow that change may be. In this particular case, the proposed change is indeed very narrow, and opponents offer no principled reason why the

¹⁹ See H.R. Rep. No. 104-204, 104th Cong., 1st sess. at pp. 54-55 (July 24, 1995) (“House Report”) (“This explosion of programming distribution sources calls for substantial reform of Congressional and Commission oversight of the way the broadcasting industry develops and competes.”).

²⁰ See *id.* at pp. 123-124; S. Conf. Rep. No. 104-230, 104th Cong., 2d sess. at p. 61 (Feb. 1, 1996).

²¹ Triton Network Systems, Inc., Petition for Reconsideration, WT Docket No. 99-217 (filed Feb. 12, 2001) at 2 n.4.

²² *Promotion of Competitive Networks in Local Telecommunications Markets*, Order on Reconsideration, 19 FCC Rcd 5637, 5641, ¶ 8 (2004).

²³ WISPA Comments at 2-3, 6-7, 15.

²⁴ See *Preemption of Local Zoning Regulation of Satellite Earth Stations*, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 11 FCC Rcd 19276, 19282, ¶ 9, 19301, ¶¶ 41 (1996) (raising extensive objections to a Commission rule that simply implemented Section 207).



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Commission's longstanding and successful application of the OTARD rules to fixed wireless should not also apply to fixed wireless equipment used for reception or transmission, or both, under the terms proposed.

Pursuant to Section 1.1206 of the Commission's Rules, this letter is being filed in ECFS in above-referenced docket. Please contact the undersigned with any questions.

Respectfully submitted,

/s/ Louis Peraertz
Louis Peraertz, Vice President of Policy

cc: Will Adams